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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/609,155 | 06/26/2003 | James D. Mahan | #903 | 7877 |
| 7590 03/21/2006 | | | EXAMINER | |
| MARCUS L. BATES 9002 SOUTH COUNTRY ROAD 1312 ODESSA, TX 79766 | | | BROWN, MICHAEL A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3764 | |
| DATE MAILED: 03/21/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|----------------------------------------|--|
| Office Action Summary | Application No. 10/609,155 | Applicant(s) MAHAN, JAMES D. | |
| | Examiner Michael Brown | Art Unit 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2-13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6-23-03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

Claims 1-4 are objected to because of the following informalities: In claim 1, the phrase "finger-like" should be changed to read – finger shaped --. In claim 1, line 33, there is a lack of antecedent basis for the elongated mount member. In claim 1, line 8, the word "simul" should be deleted. In claim 2, line 8, the word "like" should be deleted. In claim 4, line 13, the word "like" should be deleted. In claim 4, line 3, the slide bearing should be recited as the "lower slide bearing". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kodera '738 in view of Doria.

Kodera '738 discloses in figures 1-13 an apparatus for massaging the spinal area of a person's back comprising a table (the entire bed simulates a table in a doctor's office), having a main frame 1, an upper surface (the upper surface of 3), a head end 30, a foot end (the opposite end from 30), opposed sides (fig. 1), an array of thrusters 50, terminating in a back engaging fixture that include a finger protrusion 64, the upper surface includes an upwardly opening having a longitudinal groove 11, an elongate vibrating member 55, having opposed ends (fig. 3), and is positioned in an underlying relationship to the table surface, the thrusters are arranged in spaced relationship along the medial length thereof, an upper slide bearing 12, reciprocatingly receiving a medial

length of the vibrating member (fig. 3), the opposed ends of the elongate vibrating member are connected (for movement between a crank means and a pivoted bearing means, is not a positive limitation), means (the horizontal handle on the end of 61) for rotating a crank means 61, an elongated spring plate 52 positioned in an underlying relationship to an elongated mount member 62a, for engaging a biasing means 63 to elevate the finger protrusion of the thruster to engage the spine. However, Koderá doesn't disclose the finger protrusion as being more than one protrusion on the fixture. Doria teaches in figures 1-3 a massaging device comprising a fixture 6 having finger protrusions 8 thereon. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the finger protrusions as taught by Doria could be substituted for the single finger disclosed by Koderá in order to be able to massage a larger area of the spine each time one of the thrusters is moved.

Allowable Subject Matter

Claims 2-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. (Note: The objections to the claims 2-4 must be removed before these claims can be allowed).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cheng-I and Lee each discloses an apparatus for massaging.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
March 13, 2006

A handwritten signature in black ink, reading "Michael A. Brown". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

MICHAEL A. BROWN
PRIMARY EXAMINER